

**To:** Jim.Bertolacini@wisconsin.gov[Jim.Bertolacini@wisconsin.gov]  
**Cc:** Bell, Brian[bell.brianc@epa.gov]  
**From:** Newport, Robert  
**Sent:** Tue 1/19/2016 5:05:19 PM  
**Subject:** RE: WI Legal Authority Review - Permit Coverage for WisDOT Stormwater Discharges

Hi Jim

We are not sure what the latest is with regard to the stormwater-related issues included in the Legal Authority Review letter, and exactly what we will discuss in our upcoming call. But below is (we think) the latest from our end on the issue of providing permit coverage for WisDOT stormwater discharges.

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-----Original Message-----

From: Newport, Robert  
 Sent: Thursday, April 24, 2014 1:13 PM  
 To: Russell.Rasmussen@Wisconsin.gov  
 Cc: Pierard, Kevin <pierard.kevin@epa.gov>; Bell, Brian <bell.brianc@epa.gov>; Kowal, Kathleen <kowal.kathleen@epa.gov>; White, Quintin <white.quintin@epa.gov>  
 Subject: WI Legal Authority Review - Permit for DOT Stormwater Discharges

Hi Russ

A while back we had a call with you and Ken and Susan about the about the Excel spreadsheet for tracking legal authority review items. During the call we discussed the issue about having a WPDES permit for the DOT to cover its construction stormwater discharges.

We discussed a plan of action something like the following: (1) Revised statutory language that says DOT needs to operate under a permit. (2) WDNR would probably write a general permit specifically for DOT. (3) There would be an updated MOA between WDNR and DOT. The agreement would lay out some operating procedures. You might be able to use some language from the earlier MOA.

In the call you indicated it will not be a viable course of action for WDNR to take an enforcement action against your sister agency. You asked for our views about that. I think where we come out on that is: in the MOA maybe you could say something to the effect that "if noncompliance is (or maybe you would say "discharge issues are") identified related to a project or a group of projects, WDNR would stand ready to provide technical assistance/ compliance assistance to WISDOT to improve the situation." And just stay silent on if you ever would or would not take an enforcement action.

It would seem to us that as long as the MOA is silent on this topic, and there is nothing in the permit or the MOA that would in any way limit EPA's ability to take an enforcement action (if that situation were ever warranted), the general approach outlined above is potentially viable. I think we would be interested in seeing the MOA language and reviewing the draft permit for WISDOT, but it certainly seems like language could be crafted that everyone could live with.

It might also be good to think about MS4 permit coverage for WISDOT. WISDOT is an MS4 permittee in urbanized areas. Perhaps WDNR could develop a tailored MS4 permit that could be issued in tandem with the construction permit. Several States have MS4 permits specifically for their DOTs.

Sorry we are a little late getting back to you on this topic. If you would like to discuss this in more detail, please let me know or Kevin or Brian Bell and we can organize a short call.

Also, Kevin let us know you are now the man in charge! Congratulations!! We were all very happy to hear about that.

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